
By: **Delegate McHale**

Rules suspended

Introduced and read first time: March 13, 2003

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Architectural and Engineering Services - Selection Process**

3 FOR the purpose of altering the selection process for the procurement of architectural
4 and engineering services; requiring the procedures for the General Selection
5 Board and the Transportation Selection Board to take into account certain
6 factors, including the price proposed for the services to be provided; requiring
7 the General Selection Board and the Department of Transportation to establish
8 certain technical rankings to develop certain lists; requiring the General
9 Selection Board and a transportation unit to begin negotiating with a certain
10 number of offerors on certain lists; authorizing the General Selection Board and
11 a transportation unit to limit certain negotiations with certain offerors under
12 certain circumstances; requiring the General Selection Board and a
13 transportation unit to develop certain final lists based on certain factors;
14 requiring the General Selection Board and a transportation unit to negotiate
15 certain final rates of compensation with the most qualified offerors based on
16 certain factors; altering the process for conducting alternative negotiations; and
17 generally relating to the selection process for the procurement of architectural
18 and engineering services.

19 BY repealing and reenacting, with amendments,
20 Article - State Finance and Procurement
21 Section 13-304, 13-308, and 13-311
22 Annotated Code of Maryland
23 (2001 Replacement Volume and 2002 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article - State Finance and Procurement**

27 13-304.

28 (a) The selection boards shall adopt regulations that provide substantially
29 similar procedures to carry out this subtitle.

1 (b) The procedures of each selection board shall:

2 (1) ensure that a recommendation to the Board of Public Works for the
3 award of a procurement contract for architectural or engineering services costing over
4 \$200,000 is made on a competitive basis and includes an evaluation of the technical
5 proposals and qualifications of at least 2 persons; AND

6 (2) TAKE INTO ACCOUNT, IN THE FOLLOWING ORDER OF IMPORTANCE:

7 (I) THE PROFESSIONAL COMPETENCE OF OFFERORS;

8 (II) THE TECHNICAL MERITS OF PROPOSALS; AND

9 (III) THE PRICE PROPOSED FOR THE SERVICES TO BE PROVIDED.

10 13-308.

11 (a) The General Selection Board shall:

12 (1) evaluate technical proposals and the qualifications of the persons
13 submitting proposals; and

14 (2) [determine] ESTABLISH AN OVERALL TECHNICAL RANKING FOR
15 EACH OFFEROR AND DEVELOP an order of priority LIST based on those evaluations.

16 (b) (1) The General Selection Board shall:

17 (i) begin negotiations with AT LEAST TWO OF the most qualified
18 [person] PERSONS ON THE LIST DEVELOPED UNDER SUBSECTION (A)(2) OF THIS
19 SECTION; and

20 (ii) [try to negotiate] REQUEST THE PRICE OF a procurement
21 contract [with that person at] FROM EACH OF THOSE PERSONS BASED ON a rate of
22 compensation that is fair, competitive, and reasonable.

23 (2) THE GENERAL SELECTION BOARD MAY LIMIT ITS PRICE AND
24 CONTRACT NEGOTIATIONS UNDER PARAGRAPH (1) OF THIS SUBSECTION TO ONLY
25 OFFERORS WHOSE QUALIFICATIONS AND TECHNICAL PROPOSALS:

26 (I) MEET THE REQUIREMENTS OF THE SOLICITATION; AND

27 (II) ARE WITHIN A REASONABLE RANGE OF THE HIGHEST RANKED
28 OFFERORS UNDER SUBSECTION (A) OF THIS SECTION.

29 [(2)] (3) In determining WHETHER the rate of compensation under this
30 subsection IS FAIR, COMPETITIVE, AND REASONABLE, the General Selection Board
31 shall:

32 (i) consider the scope and complexity of the architectural or
33 engineering services required; and

34 (ii) conduct a detailed analysis of the cost of those services.

1 (4) FROM THE RESULTS OF THE PROCESS UNDER PARAGRAPH (1) OF
2 THIS SUBSECTION, THE GENERAL SELECTION BOARD SHALL:

3 (I) DETERMINE A FINAL ORDER OF PRIORITY LIST BASED ON, IN
4 THE FOLLOWING ORDER OF IMPORTANCE:

- 5 1. THE PROFESSIONAL COMPETENCE OF OFFERORS;
- 6 2. THE TECHNICAL MERITS OF PROPOSALS; AND
- 7 3. THE PRICES PROPOSED FOR THE SERVICES TO BE
8 PROVIDED; AND

9 (II) NEGOTIATE A FINAL RATE OF COMPENSATION WITH THE MOST
10 QUALIFIED OFFEROR BASED ON THE FACTORS SET FORTH IN SUBPARAGRAPH (I) OF
11 THIS PARAGRAPH.

12 (c) [(1) If the General Selection Board is unable to negotiate a satisfactory
13 procurement contract at a rate of compensation that is fair, competitive, and
14 reasonable, it shall:

15 (i) terminate negotiations with the most qualified person; and

16 (ii) negotiate in the same manner with the second and, if necessary,
17 the third most qualified person chosen under subsection (a) of this section.

18 (2)] If the General Selection Board is unable to negotiate a procurement
19 contract with any person chosen under [subsection (a)] SUBSECTION (B) of this
20 section, the General Selection Board shall:

21 [(i) (1) [choose additional persons in order of their competence
22 and qualification] ESTABLISH A NEW ORDER OF PRIORITY LIST FROM THE PERSONS
23 REMAINING ON THE LIST DEVELOPED UNDER SUBSECTION (A)(2) OF THIS SECTION;
24 and

25 [(ii) (2) continue negotiations in accordance with the procedures
26 under this section until it reaches an agreement.

27 (d) The General Selection Board may delegate the negotiation process to the
28 Department of General Services, but any negotiating team shall include a
29 representative of the unit requesting the procurement.

30 13-311.

31 (a) The Department of Transportation shall establish a selection process based
32 on a competitive procedure to:

33 (1) promote engineering and design quality and ensure maximum
34 competition by professional companies of all sizes providing architectural or
35 engineering services;

1 (2) evaluate technical proposals and the qualifications of the persons
2 submitting proposals; and

3 (3) [determine] ESTABLISH AN OVERALL TECHNICAL RANKING FOR
4 EACH OFFEROR AND DEVELOP an order of priority LIST based on those evaluations.

5 (b) (1) From the results of the selection process under subsection (a) of this
6 section, the transportation unit shall:

7 (i) begin negotiations with AT LEAST TWO OF the most qualified
8 [person] PERSONS ON THE LIST DEVELOPED UNDER SUBSECTION (A)(3) OF THIS
9 SECTION; and

10 (ii) [try to negotiate] REQUEST THE PRICE OF a procurement
11 contract [with that person at] FROM EACH OF THOSE PERSONS BASED ON a rate of
12 compensation that is fair, competitive, and reasonable.

13 (2) THE TRANSPORTATION UNIT MAY LIMIT PRICE AND CONTRACT
14 NEGOTIATIONS UNDER PARAGRAPH (1) OF THIS SUBSECTION TO ONLY OFFERORS
15 WHOSE QUALIFICATIONS AND TECHNICAL PROPOSALS:

16 (I) MEET THE REQUIREMENTS OF THE SOLICITATION; AND

17 (II) ARE WITHIN A REASONABLE RANGE OF THE HIGHEST RANKED
18 OFFERORS UNDER SUBSECTION (A) OF THIS SECTION.

19 [(2)] (3) In determining WHETHER the rate of compensation under this
20 subsection IS FAIR, COMPETITIVE, AND REASONABLE, the transportation unit shall:

21 (i) consider the scope and complexity of the architectural or
22 engineering services required;

23 (ii) conduct a detailed analysis of the cost of those services; and

24 (iii) comply with limits on costs reimbursement, including, but not
25 limited to overhead limits, established by the Transportation Selection Board. In
26 setting such limits, the Board shall consider the goal of the selection process set forth
27 in paragraph (1) of this subsection, as well as the reasonable cost of architectural or
28 engineering services.

29 (4) FROM THE RESULTS OF THE PROCESS UNDER PARAGRAPH (1) OF
30 THIS SUBSECTION, THE TRANSPORTATION UNIT SHALL:

31 (I) DETERMINE A FINAL ORDER OF PRIORITY LIST BASED ON, IN
32 THE FOLLOWING ORDER OF IMPORTANCE:

33 1. THE PROFESSIONAL COMPETENCE OF OFFERORS;

34 2. THE TECHNICAL MERITS OF PROPOSALS; AND

1 3. THE PRICES PROPOSED FOR THE SERVICES TO BE
2 PROVIDED; AND

3 (II) NEGOTIATE A FINAL RATE OF COMPENSATION WITH THE MOST
4 QUALIFIED OFFEROR BASED ON THE FACTORS SET FORTH SUBPARAGRAPH (I) OF
5 THIS PARAGRAPH.

6 (c) [(1) If the transportation unit is unable to negotiate a satisfactory
7 procurement contract at a rate of compensation that is fair, competitive, and
8 reasonable, it shall:

9 (i) terminate negotiations with the most qualified person; and

10 (ii) negotiate in the same manner with the second and, if necessary,
11 the third most qualified person chosen under subsection (a) of this section.

12 (2) If the transportation unit is unable to negotiate a procurement
13 contract with any person chosen under [subsection (a)] SUBSECTION (B) of this
14 section, the transportation unit shall:

15 [(i) (1) [choose additional persons in order of their competence
16 and qualification] ESTABLISH A NEW ORDER OF PRIORITY LIST FROM THE PERSONS
17 REMAINING ON THE LIST DEVELOPED UNDER SUBSECTION (A)(3) OF THIS SECTION;
18 and

19 [(ii) (2) continue negotiations in accordance with the procedures
20 under this section until it reaches an agreement.

21 (d) The Transportation Selection Board may delegate the negotiation process
22 to the Department of Transportation, but any negotiating team shall include a
23 representative of the transportation unit requesting the procurement.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2003.